

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 669 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

AND

MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes. except bracketed.

2. To be referred to the Reporter or not? Yes. @or
not? Yes. @or not? Yes. @or not? Yes.
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3. Whether Their Lordships wish to see the fair copy
of the judgement? No.

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No.

5. Whether it is to be circulated to the Civil Judge?
No.

HARMINDRASINGH PRITAMSINGH

Versus

Appearance:

MR HN JHALA for Petitioner

MR. DN PATEL A.P.P. For Respondent No. 3 & 4.

MR AK CHITNIS for Respondent No. 1 & 2

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE R.P.DHOLAKIA

Date of decision: 05/02/98

ORAL JUDGEMENT (Per B.C. Patel, J.)

(Rule. Mr. D.N. Patel learned A.P.P. waives service of rule on behalf of respondents no.3 and 4. Mr. Hakim learned advocate waives service of rule on behalf of respondents. no. 1 & 2.

2. One Harmindarsing Pritam Singh Hora by filing the present petition under Article 226 of the Constitution of India, prayed for issuance of writ of Habeas Corpus directing the opponent no. 3 Police Inspector, Ghatlodiya Police Station, Ahmedabad to search out Harmeet Kaur minor daughter of the petitioner and set her free from unlawful custody of opponent no. 1 Imtiaz Imamuddin Qureshi who is concealing Harmeet Kaur to the knowledge of opponent no. 2 Imamuddin Ahmedmian Qureshi and to produce her before this court. The Court hearing the matter issued the notice on 26-5-1997 returnable on 4-6-1997. The Court also directed opponent no. 3 to make inquiry about the whereabouts of the missing girl Harmeet Kaur and report to the Court on the returnable date.

3. It appears that thereafter Mr. Hakim learned advocate appearing for the respondents no. 1 and 2 made the statement that both the boy and the girl shall remain present before the Court. The Court hearing the matter on 19-6-1997 has observed in the order that "we are of the opinion that the girl should remain at Vikas Gruh, Paldi for a period up to 30th June, 1997 and during this period she shall stay alone without the company of any member of either of the two families." The Court further directed that none of the either of the two families, including the father of the girl and respondent no. 1 shall be permitted to visit her or see her and the girl was also directed not to move out from the Vikas Gruh, Paldi. The police was also directed to give requisite protection during the period within the premises of Vikas Gruh, Paldi. The Court also directed the Investigating

Officer to record statement of the girl within the premises of Vikas Gruh, Paldi.

4. The Court hearing the matter earlier considered the matter more than once and also gave opportunities to the boy and the girl to have talk with each other. On 3-7-1997 the boy and the girl were permitted to sit in the court and talk. It appears that later on she requested that she would like to address the Honourable Judges in the chamber. Thereafter, she was called in the chamber but in the company of the officers of Vikas Gruh, Paldi. At the request of the girl the boy was also called in the chamber. They had conference for a considerable time in the presence of the officers of Vikas Gruh, Paldi. The girl after having long conference with the boy expressed her desire to stay at Vikas Gruh, Paldi till she completes the age of 18 years. It appears that ultimately the Court directed that the girl should stay at Vikas Gruh, Paldi till 15th December, 1997. She would attain the age of majority on 16th December 1997 and she will be at liberty to express her desire and will. The Court was of the opinion that the Habeas Corpus Bench thereafter will pass necessary orders. We do not refer the other aspects in this order about the permission given to the boy and the girl to exchange letters.

5. On 7-7-1997 The Court passed further order in view of the further developments. On that day the girl attended the Court at 12-00 noon and attention of the Court was drawn by her. On verification she stated that on the previous day evening she had left Vikas Gruh, Paldi and had travelled up to Surat and has returned on that day in the morning and has remained present in the Court. She disclosed her desire to make some representation before the Court. The office bearers of Vikas Gruh, Paldi, were informed regarding this development by the learned Addl. Government Pleader. The office bearers of Vikas Gruh, Paldi rushed to the Court and stated that the girl left Vikas Gruh, Paldi previous evening and two police stations, Ellisbridgde Police Station and Ghatlodiya Police Station, have been informed. The Court perused the statement in original made by the girl herself voluntarily to the Vikas Gruh, Paldi in which she has stated that she would like to stay at her parental house and she assured that she would remain present before the Court on 7-7-1997. It appears that after that she left Vikas Gruh, Paldi without informing anybody. It appears that the learned counsel were present before the Court and there was consensus amongst all the concerned, including the girl herself

that, she would like to stay in the house of her father petitioner at Ahmedabad. The details regarding her stay were also worked out in consensus that the girl shall stay at the house of her father petitioner till 15th December, 1997 and she will be presented before the Habeas Corpus Bench on 16th December, 1997 and she would express her will and desire for further course regarding her stay and the Habeas Corpus Court would be passing appropriate orders. It was agreed before the Court that during this stay the girl will be taken to Vikas Gruh, Paldi every alternative Monday between 2.30 p.m. & 3.30 p.m. by her father. Respondent no. 1 Imtiaz was also allowed to meet her there. The office bearers of Vikas Gruh, Paldi, were to make necessary arrangement for their sitting in the visitor's room and the boy and the girl were allowed only to talk with each other during this period, while sitting in the said room. There was also consensus on the part of all concerned that, girl shall not be taken out during this period by the boy. It was also understood and agreed by the petitioner - father that, during her stay in his house, the petitioner father shall not make any effort or endeavour to have her betrothal or marriage and he shall see the welfare of the girl and shall produce the girl before this Court on 16th December, 1997. The earlier order was modified by the Court in view of the aforesaid terms. Thereafter, the matter was placed before other Court on 17-12-1997.

6. It appears that thereafter respondent no. 1 Imtiaz filed an application being Cri. Misc. Application No. 4377 of 1997, making grievances that though the Court had permitted the boy and the girl under specified conditions to meet and talk, the petitioner had not permitted the boy to meet her. As per the order it appears that the matter was heard by the Court in the chamber. The Court also allowed the boy and girl to meet each other exclusively in a separate room for some time. After the said meeting, on query being put to the girl she stated before the Court with clear mind and emphatically that she does not wish to meet the boy, although so permitted by the Court under the aforesaid order. The boy was present when the girl disclosed her desire and also it is clear from the order that the boy had agreed to the decision and accepted the same. The father of the girl also made a statement that in any case if his daughter wants to meet the boy as permitted by the Court he shall not obstruct such a meeting and in fact shall permit her to meet the boy as contemplated in the aforesaid order. The said application has been disposed of on 24-09-97.

7. On 16-12-1997 the matter was not placed on the Board but was placed on 17-12-1997. The learned advocate for the petitioner was not present. The father of the girl also chosen not to remain present with the girl as per the statement made before the Court. Under the circumstances, the Court issued a bailable warrant against the petitioner - father directing him to remain present before this Court on 22-12-1997 without fail. On 22-12-1997 Mr. Jhala learned advocate pointed out the order passed in Cri. Misc. Application No. 4377 of 1997 which was not pointed out by Mr. Hakim learned advocate for the opponent when the Court passed the order on 17-12-1997. Mr. Jhala learned advocate at that point of time submitted to the Court that though the girl was of tender age and minor she was converted to Islam and thereafter marriage ceremony was performed and according to his submission it is nothing but an illegal act. He submitted that the girl was minor at the relevant time and therefore conversion or marriage has no legal force. The Court without expressing any opinion at the request of Mr. Jhala adjourned the matter on 30-12-1997 as the girl Harmeet Kaur was at Amritsar, she could not come on 22-12-1997. On 30-12-1997 Mr. Parekh learned advocate for Mr. Jhala stated that the girl Harmeet Kaur was required to be produced before the Court but she was sick and confined to bed at Amritsar and hence she could not be produced before the Court. On the other side, Mr. Hakim has stated that she was at Indore and not at Amritsar. On 12-1-1998 on which date the matter was adjourned Mr. Jhala placed before the Court the affidavit sworn by Harmeet Kaur. On behalf of the opponent also an affidavit is filed. At the request of Mr. Jhala the Court adjourned the matter to 27-1-1998. Mr. Jhala stated before the Court that girl Harmeet Kaur will be produced before the Court on that date.)

8. The matter was placed on 3-2-1998 before this Bench and on behalf of Mr. Jhala learned advocate Mr. Parekh submitted that the girl has become major and she has no desire to reside with respondent no. 1 and she is free wherever she wants to go. He submitted that the application for transfer of the writ petition was filed before the Apex Court being Transfer Petition (Cri.) No. 32 of 1998 by the petitioner - father and at preliminary hearing after hearing the petitioner - father the Court passed the order as under :

"It appears that the girl has become major as she has completed 18 years of age on 15-12-1997.

The father, therefore, cannot be compelled to

produce the girl before the court.

It will be open to the High Court to pass any other order which it may deems fit.

The transfer petition is dismissed."

9. Mr. Parekh learned advocate for the petitioner submits that in view of this, the petitioner now should not be called upon to produce the girl before the Court. He submitted that minor girl was kidnapped for which the complaint was also filed. He submitted that the respondent no. 1 was arrested and was given on remand to the police for some time and thereafter he was kept in the judicial custody. No doubt, thereafter he has been released on bail. He submitted that the father was entitled to the custody of the girl because she was minor and the Court has given the custody of the girl to the father after ascertaining her wishes. He submitted that the girl specifically made a statement before the Court that she had no desire to meet the boy.

10. On 24-9-1997 the girl with clear mind and emphatically disclosed her desire that she does not wish to meet the boy though permitted by the Court. As required under the aforesaid order she was permitted to meet the boy in a separate room for some time and thus she has taken a decision at the relevant time before the Court that she has no desire to meet the boy. In the sworn testimony before the Executive Magistrate at Amritsar she has stated that she had come to Amritsar of her will and volition. She has also stated that during her school days she was enticed by Imtiaz to elope with him and to embrace Islam and to marry him. In the said affidavit she has stated that she does not wish to return to Gujarat or to see the boy who has ruined her life and has decided to spend the rest of her life in serving as a humble servant in the house of God namely Akal Takt of Golden Temple. She has also in the sworn testimony stated that she has been directly placed under the care of Guru Sant Chamkaur Singh who is now her spiritual guide.

11. The girl was produced before the Court. Her desire was considered and thereafter she was permitted to go with her father. On attaining the majority she has taken a decision, which clearly indicates that she has no desire to see the boy. It is clear that a minor girl was converted to Islam and thereafter the boy married her. Removal of a minor from the parental care amounts to an offence for which complaint is lodged before the police.

After attaining majority in view of the Apex Court's order, the father can not be compelled to produce her. Rule made absolute, accordingly.

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